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6 *Court Appointed Pro Bono Attorney for Plaintiff*

7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

9 ROSEMARY VANDECAR, an Individual;

10 Plaintiff,

CASE NO.: 2:20-cv-02150-ART-BNW

11 vs.

12 HAROLD WICKHAM, an Individual; GABRIELA
13 GARCIA-NAJERA, an Individual; RONALD
14 OLIVER, an Individual; JENNIFER NASH, an
15 Individual; NICOLE HOLSTON, an Individual;
16 DWIGHT NEVEN, an Individual; DARIO
17 SANCHEZ, an Individual; DEAN MEDEIROS, an
18 Individual; VELASCO, an Individual; KARISSA
19 CURRIER, an Individual; C. McGOWAN, an
20 Individual; MARQUISE L. FRANKLIN, an
21 Individual; JAMES BAUMGRAS, an Individual;
22 RIVERA, an Individual; E. ROJAS, an Individual;
23 ANDREW TRUJILLO, an Individual; NEVADA
24 DEPARTMENT OF CORRECTIONS, a political
25 subdivision of the State of Nevada;

26 Defendants.

27 **MOTION TO EXTEND TIME FOR SERVICE**
28 **(Second Request)**

Plaintiff, ROSEMARY VANDECAR (“Plaintiff”), through her counsel of record, Andréa L. Vieira, Esq. of THE VIEIRA FIRM, PLLC hereby respectfully moves this Court for an extension of time to serve Plaintiff’s Third Amended Complaint (ECF No. 42). This is the second motion to extend time for service.

This Motion is made and based on FRCP 4(m), the pleadings and papers on file herein, the following Memorandum of Points and Authorities, the Declaration of Andréa L. Vieira, Esq.

and any exhibits thereto, and any argument this Court may allow at the time of hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

I. RELEVANT PROCEDURAL HISTORY

This is an inmate civil rights matter brought pursuant to 42 U.S.C. § 1983. Plaintiff, Rosemary Vandecar, filed a complaint in proper person on July 7, 2021.¹

On March 10, 2022, an Acceptance of Service on behalf of Defendants Dario Sanchez, A Trujillo, and Harold Wickham was filed.²

On June 27, 2022, this Court entered an order that allowed Plaintiff to file a Second Amended Complaint by September 30, 2022.³ On July 8, 2022, undersigned counsel was appointed.⁴

On September 30, 2022, the Second Amended Complaint was filed.⁵ Thereafter, the parties entered into a Stipulation to File Third Amended Complaint and Set Deadlines to File Notice of Acceptance of Service and Answer.⁶ On October 21, 2022, this Court entered an Order approving the parties' stipulation.⁷

Among other things, this Court's Order required that Defendants file under seal, with service to Plaintiff's counsel, the last known address for any of the named defendants for whom the Office of the Attorney General ("OAG") could accept service.⁸

The Third Amended Complaint was filed on October 31, 2022.⁹ On November 21, 2022, Defendants filed their Acceptance of Service¹⁰ (accepting service for every defendant except C McGowan, Maritza Velasco-Avila, Luis Rivera, and Edison Rojas) as well as their Notice of Under Seal Submission.¹¹

¹ ECF No. 7

² ECF No. 24

³ ECF No. 36

⁴ ECF No. 37

⁵ ECF No. 39

⁶ ECF No. 40

⁷ ECF No. 41

⁸ ECF No. 41, 2:3-8.

⁹ ECF No. 42

¹⁰ ECF No. 43 and 44

¹¹ ECF No. 44

The summons for each the remaining defendants for which defense counsel did not accept service were issued on December 21, 2022.¹² On December 27, 2022, Plaintiff requested an additional 90 days to serve defendants Maritza Velasco-Avila, Luis Rivera, and Edison Rojas.¹³ Plaintiff's request was granted on December 28, 2022, and the deadline to serve was extended until March 29, 2023.¹⁴

Plaintiff's counsel sent service waivers to all three remaining defendants on January 5, 2023.¹⁵ None of the service waivers were returned.¹⁶ Plaintiff's counsel subsequently hired a private investigator, Robert Lawson, to locate and serve the remaining defendants.¹⁷ Mr. Lawson was able to locate and serve Defendant Maritza Velasco-Avila on March 14, 2023¹⁸ and Defendant Luis Rivera on March 15, 2023.¹⁹

Mr. Lawson was also able to locate Defendant Edison Rojas, who is now living in Nebraska and working for the Nebraska Department of Corrections.²⁰

Plaintiff respectfully requests an additional 30 days to serve Defendant Edison Rojas in Nebraska where he now lives and works.

II. LAW AND ARGUMENT

A complaint must be served within 90 days, but if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.²¹

FRCP 4(m) *requires* a district court to grant an extension of time when the plaintiff shows good cause for the delay and permits the district court to grant an extension in the absence of good cause.²² Good cause is not a rigorous standard which federal courts construe "broadly across procedural and statutory contexts."²³ Further, requests for an extension beyond the expiration of

¹² ECF No. 58

¹³ ECF No. 59

¹⁴ ECF No. 60

¹⁵ ECF No. 76

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ ECF No. 71

¹⁹ ECF No. 72

²⁰ ECF No. 74

²¹ FRCP 4(m)

²² *Efaw v. Williams*, 473 F.3d 1038, 1040 (9th Cir. 2007) (emphasis in original)

²³ *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259 (9th Cir. 2010)

1 a deadline should be granted unless there is bad faith on the part of the party seeking relief or
2 there is prejudice to the adverse party.²⁴

3 When exercising its discretion under FRCP 4(m), a district court may consider factors like
4 a statute of limitations bar, prejudice to the defendant, actual notice of a lawsuit, and eventual
5 service.²⁵

6 Here, good cause exists to extend the deadline for service for an additional 30 days
7 because due to Plaintiff's diligence two of the three defendants remaining to be served have been
8 served, and the remaining defendant has been located out of state. Plaintiff attempted to mitigate
9 service issues by sending each remaining Defendant a service waiver, but the Defendants failed
10 to return the executed waiver.

11 Defendants will not be prejudiced by an additional 30-day extension of time to serve
12 Defendant Edison Rojas *only* as it is believed that he has actual notice of this lawsuit. As part of
13 the parties' stipulation, Defense counsel requested time to contact each defendant to obtain for
14 permission to accept service on their behalf. Defendant Rojas is one of the defendants for whom
15 defense counsel did not receive a request for representation.²⁶ Therefore, Defendants Rojas has
16 presumably been made aware of this lawsuit via the Office of the Attorney General yet declined
17 representation. An extension of time will allow time for Plaintiff serve Defendant Rojas in
18 Nebraska, where he has been located and is confirmed as owning a home and working for the
19 Nebraska Department of Corrections.

20 Last, Plaintiff's counsel has already conferred with defense counsel, Randall Gilmer,
21 from the OAG who stated that he takes no position to Plaintiff's request and no opposition will
22 be filed.²⁷

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27 ²⁴ *Id.*

28 ²⁵ *Efaw v. Williams*, 473 F.3d 1038, 1041 (9th Cir. 2007)

²⁶ See ECF No. 41, 1:26 – 2:2.

²⁷ ECF No. 76

1 **III. CONCLUSION**

2 Based on the foregoing, Plaintiff respectfully requests an additional 30-day extension of
3 time to serve Defendant Edison Rojas.

4 DATED this 28th day of March, 2023.

5 **THE VIEIRA FIRM**

6
7 By: /s/ Andréa L. Vieira
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11 *Court Appointed Pro Bono*
12 *Attorney for Plaintiff*

13 **ORDER**

14 **IT IS SO ORDERED**

15 **DATED:** 6:06 pm, March 29, 2023

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18 **BRENDA WEKSLER**
19 **UNITED STATES MAGISTRATE JUDGE**
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CERTIFICATE OF SERVICE

Pursuant to FRCP 5 and LR IC 1-1, I hereby certify that I served a true and correct copy of the foregoing **MOTION TO EXTEND TIME FOR SERVICE (Second Request)** on the 28th day of March, 2023, upon the all parties registered for e-service in the service list of this matter on the court's electronic filing system, or if the document is one that will not be filed electronically pursuant to LR IC 1-1(c), via U.S. Mail postage fully prepaid, addressed to each party as follows:

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